

IRFLP 119 Participation of Children in Proceedings

Idaho Rules of Family Law Procedure Rule 119. Participation of Children in Proceedings.

A. Appointment of child's attorney

1. Pursuant to Idaho Code 32-704(4), the court, in its discretion, may appoint a lawyer to represent a child in a custody or a visitation dispute and shall enter an order for costs, fees, and disbursements in favor of the child's attorney in compliance with that statute.

2. The order of appointment must clearly set forth the terms of the appointment, including the reasons for and duration of the appointment, rights of access as provided under this paragraph and applicable terms of compensation.

3. Qualifications of Child's Attorney. The court may appoint as a child's attorney only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made, as determined by the court and according to any standards established by Idaho law or rule.

4. Access to Child and Information Relating to Child.

a. Subject to subdivision 3 and any conditions imposed by the court that are required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding, the court shall issue an order of access at the time of an order of appointment, authorizing the child's attorney to have immediate access to the child and any otherwise privileged or confidential information relating to the child.

b. The custodian of any relevant record relating to a child shall provide access to a person authorized by order issued pursuant to this rule to access the records.

c. A child's record that is privileged or confidential under law other than this rule may be released to a person appointed under this rule only in accordance with that law. If necessary, either or both parents may be ordered to comply with this rule by signing any necessary releases of information that are in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

5. Participation in Proceeding by Child's Attorney.

a. A child's attorney shall participate in the conduct of the litigation to the same extent as an attorney for any party.

b. A child's attorney may not engage in ex parte contact with the court except as authorized by law other than this rule.

c. In a proceeding, a party, including a child's attorney may call any court-appointed expert witness as a witness for the purpose of cross-examination regarding the witness' report without the advisor's being listed as a witness by a party.

d. An attorney appointed as a child's attorney may not be compelled to produce the attorney's work product developed during the appointment; be required to disclose the source of information

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obtained as a result of the appointment; submit a report into evidence; or testify in court.

e. Subdivision d above does not alter the duty of an attorney to report child abuse or neglect under applicable law.

B. Presence of child. Unless a minor child is represented by counsel as previously set forth in this Rule, and except in emergency situations, no minor child shall provide sworn testimony, either written or oral; be brought to court as a witness or to attend a hearing; or be subpoenaed to appear at a hearing without prior court order based on good cause shown.

C. Court interview of a child. On motion of any party, or its own motion, the court may, in its discretion, conduct an in camera interview with a minor child who is the subject of a custody or parenting time dispute, to ascertain any relevant information, including the child's wishes as to the child's custodian and as to parenting time. The interview may be conducted at any stage of the proceeding and shall be recorded by a court reporter or any electronic medium that is retrievable in perceivable form. The record of the interview may be sealed, in whole or in part, based upon good cause and after considering the best interests of the child. The parties may stipulate that the record of the interview shall not be provided to the parties or that the interview may be conducted off the record.

D. Testimony of a child. A motion by one of the parties to offer the testimony of a minor child shall be in writing; and shall be filed with the clerk of court, provided to the court, and served on all parties not less than 28 days prior to the hearing or trial. The court shall rule upon such a motion no later than seven days prior to the hearing or trial in the matter. On reasonable notice under the circumstances, the court may, on its own motion, compel the testimony of a minor child.

(Adopted April 2, 2014, effective for early adopters July 1, 2014, effective statewide July 1, 2015.)

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